



**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 744**

**[Docket No. 160106014-6262-02]**

**RIN 0694-AG82**

**Temporary General License**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule creates a temporary general license that temporarily restores the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) to two entities added to the Entity List on March 8, 2016. BIS is issuing this rule in connection with a request to remove or modify the listing.

**DATE:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through June 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, E-mail: ERC@bis.doc.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

This final rule does not amend the Entity List, but modifies an entry on the Entity List as described further below by adding a temporary general license for two entities recently added to the Entity List.

*Addition of ZTE to the Entity List and overview of requests for removal*

BIS added Zhongxing Telecommunications Equipment (ZTE) Corporation (ZTE Corporation), ZTE Kangxun Telecommunications Ltd. (ZTE Kangxun), and two other entities to the Entity List on March 8, 2016. Details regarding the scope of the listing are at 81 FR 12004 (Mar. 8, 2016), (“Additions to the Entity List”). Each person on the Entity List has the right to request that its listing on the Entity List be removed or modified. Instructions on the request for removal or modification process are found at § 744.16 of the EAR.

The ERC reviews such requests in accordance with the procedures set forth in Supplement No. 5 to part 744. Specifically, as part of its review of requests to remove or modify a listing, the ERC will consider whether the circumstances that led to the decision to add the entity to the Entity List continue to exist. This includes reviewing whether there continues to be reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States -- the standard for revising the Entity List established in § 744.11(b) of the EAR. In connection with a request by ZTE Corporation and ZTE Kangxun to remove or modify their listings on the Entity List submitted to BIS pursuant to the foregoing provisions, and binding commitments made by these entities to the U.S.

Government, BIS is modifying the effect of their entries on the Entity List by adding a temporary general license to restore temporarily the *status quo ante* licensing policy pertaining to exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun. This final rule does not apply to the other two entities added to Supplement No. 4 to part 744 (The Entity List) on March 8, 2016.

Specifically, this final rule makes the following change to the EAR:

*Addition of Temporary General License*

This final rule amends the EAR by adding Supplement No. 7 to Part 744 to create a Temporary General License that returns until June 30, 2016 the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun to that which was in effect just prior to their having been added to the Entity List on March 8, 2016. For example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.

The impact of this temporary general license is that the license and other requirements specified in § 744.11 and Supplement No. 4 to part 744 pertaining to exports, reexports,

and transfers (in-country) to ZTE Corporation and ZTE Kangxun do not apply during the period the temporary general license is in effect. This means that the license requirements, license review policies, and license exceptions that applied on March 7, 2016, are applicable regarding exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun until June 30, 2016, unless amended. However, the temporary general license does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR, such as those specified in §§ 744.2, 744.3 and 744.4 of the EAR. For example, this temporary general license does not relieve persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, “you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.” Additionally, this temporary general license does not relieve persons of their obligation to apply for export, reexport, or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, “BIS’s ‘Know Your Customer’ Guidance and Red Flags,” when persons are involved in transactions that are subject to the EAR.

### **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International

Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the

collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). If this rule were delayed to allow for notice and comment and a delay in effective date, then the national security and foreign policy objectives of this rule would be harmed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### **List of Subject in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

## **PART 744—[AMENDED]**

1. The authority citation for 15 CFR part 744 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

2. Add Supplement No. 7 to part 744 to read as follows:

### **SUPPLEMENT NO. 7 TO PART 744 – TEMPORARY GENERAL LICENSE**

Notwithstanding the requirements and other provisions of supplement 4 to part 744, which became effective on March 8, 2016, the licensing and other requirements in the EAR as of March 7, 2016, pertaining to exports, reexports, and transfers (in-country) of items “subject to the EAR” to Zhongxing Telecommunications Equipment (ZTE) Corporation, ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China, and ZTE Kangxun Telecommunications Ltd., 2/3 Floor, Suite A, ZTE



Communication Mansion Keji (S) Road, Hi-New Shenzhen, 518057 China, are restored as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and through June 30, 2016. Thus, for example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.

Dated: March 21, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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